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September 19, 2018

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, District of Columbia 20554

*RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79.*

Dear Ms. Dortch,

Staff at the Centre County Planning and Community Development Office (Pennsylvania) appreciates the opportunity to provide comments in the matter of the above referenced dockets. We also are grateful to the Federal Communication Commission's (FCC's) choice to circulate the document (FCC-CIRC1809-02) which demonstrates transparency on this issue. We write to express our concerns over the FCC's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. While we share the Commission's objective of finding new ways to effectively deploy broadband technologies, we are concerned that the proposed language would significantly impede local governments' ability to fulfill their obligations to ensure the health, safety, and welfare of our citizens<sup>1</sup>.

Our office provides technical assistance to 29 of the county's 35 municipalities under our planning agency's jurisdiction<sup>2</sup>. Technical assistance includes drafting zoning ordinances, providing land use consistency reviews, and guiding long-term comprehensive planning. Our office is also responsible for administering the county's subdivision and land development ordinance that 25 municipalities adopted,

<sup>1</sup> The Pennsylvania Municipalities Planning Code, Act 247, P.L. 805 of 1968, as enacted and amended, makes very clear the authoritative powers granted to municipalities and municipal governing bodies, as well as counties, to make provisions to ensure the basic rights of health, safety and welfare.

<https://dc.ed.pa.gov/download/pennsylvania-municipalities-planning-code-act-247-of-1968/?wpdmdl=56205>.

<sup>2</sup> The Centre Regional Planning Agency provides services to the 6 municipalities that comprise the Centre Region Council of Governments in Centre County, Pennsylvania. <https://www.crcog.net>.

therefor, permitting the county to administer the ordinance on their behalf. Many of these municipalities lack capacity and financial resources to complete these tasks in addition to their daily, seasonal, and emergency duties. Municipalities that cannot adequately and satisfactorily evaluate land development plans and draft guiding documents are further being marginalized under this proposal in terms of the expedited review timeline, overly broad definitions, and the recommended fee structure. Narrowing the amount of time for local governments to evaluate 5G deployment applications effectively hinders their ability to fulfill public health and safety responsibilities.

- **The FCC's proposed new collocation shot clock is too extreme.** The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired with the FCC's previous decision exempting small wireless facilities from federal and historic review, this places an unreasonable burden on local governments to uphold historic preservation, retain environmental character, and could impose safety risks on the community. The communications industry has clearly stated their objective in deploying 5G which is to increase network capacity in densely built-out and populated areas versus plugging gaps in network coverage. That is an indicator to planners that small cell deployment will be targeted in boroughs and villages, some of which have local historic designations. A community's historic character is often a key component in economic development strategies related to tourism and adaptive reuse. Wireless facility proposals in historic districts should be thoroughly reviewed to ensure that the placement and the style will not detract from the overall sense of place that historic communities foster. We strongly encourage the communications industry to be open to working with historic architectural review boards to determine the best solution for providing wireless facilities in an appropriate context.
- **The FCC's proposed definition of "effective prohibition" is overly broad.** The draft report and order proposes a definition of effective prohibition that invites challenges to long-standing local rights of way requirements unless they meet a subjective and unclear set of guidelines. While the Commission may have intended to preserve local review, this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation. If a local regulation is determined to materially inhibit new service or inhibit improvements to existing services, even if the barrier is not insurmountable, that could trigger unnecessary legal cases on the grounds of arguing what is and what is not insurmountable. This determination, of course, would depend to the extent a communications company would want to pursue construction and/or installation of small wireless facilities. In addition, Pennsylvania is making progress to better accommodate wireless communication infrastructure but that, too, requires a second evaluation by local governments when the ability to control their public rights-of-way is at issue. House Bill 2564 introduced language to completely strip municipalities of their zoning authority over all wireless facilities in the rights-of-way<sup>3</sup> and, the Pennsylvania Public Utility Commission (PUC) reversed its longstanding practice of finding distributed antennae operators are not public utilities under the Pennsylvania Public Utility Code<sup>4</sup>. The PUC's reversal paired with the possibility that House Bill 2564 will become law should be sufficient evidence to the FCC that Pennsylvania is preparing for 5G deployment investments.

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<sup>3</sup> <http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2017&sInd=0&body=H&type=B&bn=2564>.

<sup>4</sup> [http://www.pacourts.us/assets/opinions/Commonwealth/out/697CD17\\_6-7-18.pdf](http://www.pacourts.us/assets/opinions/Commonwealth/out/697CD17_6-7-18.pdf).

- **The FCC's proposed recurring fee structure is an unreasonable overreach that will harm policy innovation.** We disagree with the FCC's interpretation of "fair and reasonable compensation" as meaning approximately \$270 per small cell site. Local governments share the federal government's goal of ensuring affordable broadband access especially into rural communities. Many communities have worked to negotiate fair deals with wireless providers similar to cable franchise agreements. Our county's emergency 911 office has space available for lease on county-owned towers to wireless internet service providers. Unfortunately, many lease agreements never come to fruition because the county is expected to offer this opportunity without fee in the public's best interest – according to the negotiating providers. Be it a county-owned tower or a municipal rights-of-way, there are maintenance and management costs associated with small wireless facilities for which the county and local governments should be compensated at least comparable to the cost of managing and maintaining their infrastructure.

Our county has reached out to all levels of government to find optimal solutions to deploy broadband infrastructure. We oppose this effort to restrict local authority and stymie local innovation, while limiting the obligations that providers have to our community. We urge you to oppose this Declaratory Ruling and Report and Order.

Respectfully submitted,



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cc: Margaret N. Gray, County Administrator  
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Dennis M. Bloom, Assistant Planning Director

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